

### **REMARKS**

Reconsideration and withdrawal of the rejections set forth in the Office Action dated May 3, 2010 are respectfully requested.

#### **I. Amendments**

Claims 172-174 are cancelled without prejudice. Applicants reserve the right to pursue the cancelled subject matter in a continuing application.

Claim 158 is amended to recite forming a plurality of angularly spaced plications about the gastro-esophageal junction of the patient's stomach and drawing serosal layers of the stomach into contact with one another. Basis for this amendment can be found, for example, on page 16, lines 24-26 and Fig. 10B. Claim 158 is further amended to clarify the steps of the method.

Claim 162, 170-171, and 175 are amended to conform language with amended claim 158.

New claim 176 finds basis on page 30, lines 19-20.

New claim 177 finds basis on page 29, lines 21-23.

No new matter is added by way of these amendments.

#### **II. Status of Related Applications**

Applicants note an Office action has been issued by the USPTO for each of related U.S. Patent Application Nos. 10/843,702, 11/439,461, 11/512,975. Related U.S. Patent Application No. 10/898,036 issued as U.S. Patent No. 7,431,725. Related U.S. Patent Application No. 12/793,085 was filed on June 3, 2010.

#### **III. Rejections Under 35 U.S.C. § 102**

Claims 158-163 and 172-175 were rejected under 35 U.S.C. §102(e) as allegedly anticipated by Deem et al. U.S. Publication No. 2002/0183768.

Claims 158, 159 and 164-171 were rejected under 35 U.S.C. §102(e) as allegedly anticipated by Gannoe et al. U.S. Publication No. 2004/0093091.

These rejections are respectfully traversed for the following reasons.

A. The Present Claims

The present claims are directed to a method of treating obesity in a patient comprising forming a plurality of angularly spaced plications about the gastro-esophageal junction by creating a plurality of tissue folds in the stomach tissue, cutting through the tissue fold, to form a hole, and coupling an implant to the hole in each of the plurality of plications.

B. The Applied Art

Deem et al. describe tools and methods for performing gastroplasty procedures (see ¶ [0001]). One variation involves fixing opposing interior walls of the stomach with a fastening element such as a staple (¶ [0021]). Another variation, shown in Figs. 37-39, involves creating an anastomosis between the stomach and the intestinal tract.

Gannoe et al. describe devices and methods for the attachment of expandable devices within a patient's body cavity (see ¶ [0002]). Expandable devices may be anchored to the stomach wall using intra-gastric fasteners (¶ [0025]). The expandable device is anchored to a tissue fold that may be fastened to maintain the tissue fold configuration (¶ [0027]).

C. Analysis

The standard for lack of novelty, that is, for anticipation, is one of strict identity. To anticipate a claim for a patent, a single prior source must contain all its essential elements. M.P.E.P. § 2131.

C1. Rejection over Deem et al.

*Deem et al.* fails to teach a method that includes forming a plurality of angularly spaced plications about the gastro-esophageal junction, cutting through each of the plications, and coupling an implant to the hole in each of the plications. Instead, *Deem et al.* describes making a pouch within the stomach by bringing the interior walls of the stomach together (Fig. 5B). *Deem et al.* describes an additional procedure whereby an anastomosis is created between the stomach and the intestine (Fig. 38).

C2. Rejection over Gannoe et al.

Gannoe *et al.* fails to teach a method that includes forming a plurality of angularly spaced plications about the gastro-esophageal junction, cutting through each of the plications, and coupling an implant to the hole in each of the plications. As seen in Fig. 3, Gannoe *et al.* teaches attaching an expandable device within the stomach using a fastener attached to the stomach wall. As seen in Fig. 5A, the expandable device may be attached to two folds, but the folds are not spaced about the gastro-esophageal junction. In fact, as seen in Fig. 3, Gannoe *et al.* fails to teach forming a tissue fold and attaching the fastener and expandable device at the gastro-esophageal junction at all.

Accordingly, Applicants respectfully request withdrawal of the rejections under 35 U.S.C. §102.

IV. Conclusion

In view of the foregoing, Applicants submit that the pending claims are in condition for allowance. A Notice of Allowance is, therefore, respectfully requested. If the Examiner has any questions or believes a telephone conference would expedite prosecution of this application, the Examiner is encouraged to call the undersigned at (650) 590-0700.

Respectfully submitted,  
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